a defense. *Huss* v. *Cent., etc., R. Co.,* 66 Ala. 472. In many jurisdictions, when the corporation is doing business in the state and has managing agents therein upon whom process may be served, it can set up the statute as a defense. *Lawrence* v. *Ballou,* 50 Cal. 258; *King* v. *National Min., etc., Co.,* 4 Mont. 1, 1 Pac. 727; *Turcott* v. *Yazoo, etc., R. Co.,* 101 Tenn. 102, 45 S. W. 1067, 70 Am. St. Rep. 661, 40 L. R. A. 768; *McCabe* v. *Ill. Cent. R. Co.,* 4 McCrary 492, 13 Fed. 827; *Colonial, etc., Co.* v. *Northwest, etc., Co.,* 14 N. D. 147, 103 N. W. 915, 116 Am. St. Rep. 642. Moreover, when a corporation has failed to comply with statutory requirements similar to those in the principal case and where it has agents within the state upon whom valid service of process may be made—statutes similar to those in the principal case providing for such service—then such corporation is not precluded from invoking the bar of the statute as a defense. *Turcott* v. *Yazoo, etc., R. Co., supra; McCabe* v. *Ill. Cent. Ry. Co., supra.*

The basis of this holding is that the purpose of the statute of limitations is to prevent unnecessary delay in the bringing of actions; and that when the defendant, or any agent of his, has been within the jurisdiction of the courts so that service of process might be obtained upon such defendant or agent so that said defendant would be bound by a judgment *in personam,* then there is no excuse for the plaintiff's delay. The true test of the running of the statute is whether the defendant has been amenable to service of process during the whole of the statutory period. *Huss* v. *Cent, etc., R. Co., supra;* 6 THOMP. CORP. 7841. In the principal case the defendant has not placed himself in a position to cause the plaintiff loss should the bar of the statute intervene, for the latter could have brought his action at any time within the limited period; and, therefore, with all due respect to the Oklahoma Court, it would seem that the defendant should not have been denied the defense of the statute of limitations.

MASTER AND SERVANT—WHEN RELATION EXISTS.—Where an automobile company having sold a car sent a chauffeur with the purchaser to take it through the city and the plaintiff was injured by the chauffeur's negligence, it was *Held,* he is the servant of the defendant company and the said company is liable, notwithstanding the fact that the chauffeur had obeyed several orders from the new owner. *Dalrymple* v. *Covey Motor Car Co.* (Ore.), 135 Pac. 91.

The doctrine of *respondeat superior* rests on the power which the superior may rightfully exercise over his subordinates. It does not exist when there is no power of control, and the power of control is absent when the primary employer has no voice in the selection or retention of the subordinate. *Quinn* v. *Complete Electric Const. Co.,* 46 Fed. 506; WOOD, MASTER AND SERVANT, § 317. The rule is well established that the driver of a hired vehicle is the servant of the owner and not the hirer when the latter has only sufficient control to direct such servant where to go and what to do. *Quarman* v. *Burnett,* 6 M. & W. 499; *Crockett* v. *Calvert,* 8 Ind. 127; *Joslin* v. *Grand Rapids Ice Co.,* 50 Mich. 516, 15

N. W. 887, 45 Am. Rep. 54; *Kellogg* v. *Church Charity Foundation of L. I.*, 203 N. Y. 191, 96 N. E. 406.

The question of who is liable as master depends on who is in control as proprietor; who has control of the method of reaching the result and not of the result to be reached. *Shephard* v. *Jacobs*, 204 Mass. 110, 90 N. E. 392. The bargain made by a master giving another the use of his servant does not serve to abrogate the relation established by the only contract the servant has made. *Driscoll* v. *Towle*, 181 Mass. 416, 63 N. E. 922.

MUNICIPAL CORPORATIONS—DE FACTO OFFICERS—STATUTES.—Where a municipal corporation was organized under an unconstitutional statute, *Held*, citizens who have received benefits from improvements contracted for by the city can not attack collaterally the legal existence of the municipal government, and are liable to the contractor. *Wendt* v. *Berry* (Ky.), 157 S. W. 115. See NOTES, p. 239.

MUNICIPAL CORPORATIONS—RIGHTS OF TAXPAYER—CONTRACT WITH WATER COMPANY.—Plaintiff's property was burned because of the low pressure in the fire hydrant which defendant had contracted with the city to supply with all water necessary to extinguish fires. *Held*, there is no such privity of contract between the taxpayer and the water company as will allow the former to sue the latter *ex contractu* for breach or *ex delicto* for the violation of the public duty assumed. *Braden* v. *Water Supply Company of Albuquerque* (N. M.), 135 Pac. 81.

Lack of privity of contract is the ground upon which the same decision is reached in all but three of the states where the question has arisen. *Home* v. *Presque Isle Water Co.*, 104 Me. 217, 71 Atl. 769, 21 L. R. A. (N. S.) 1021, and cases cited therein; *German Alliance Ins. Co.* v. *Home Water Co.*, 226 U. S. 220, 33 Sup. Ct. 32, 42 L. R. A. (N. S.) 1000; *Bush* v. *Artesian, etc., Water Co.*, 4 Ida. 618, 43 Pac. 69, 95 Am. St. Rep. 161; *Wilkinson* v. *Light, Heat & Water Co.*, 78 Miss. 389, 28 So. 877; *Baum* v *Somerville Water Co.* (N. J.), 87 Atl. 140; *Wainwright* v. *Queens County Water Co.*, 78 Hun 146, 28 N. Y. Supp. 987.

Kentucky, Florida and North Carolina, recognizing a privity in such cases, hold otherwise and allow the citizen to recover. *Paducah Lumber Co.* v. *Paducah Water Supply Co.*, 89 Ky. 340, 12 S. W. 554, 7 L. R. A. 77, 25 Am. St. Rep. 536; *Mugge* v. *Tampa Water Works Co.*, 52 Fla. 371. 42 So. 81, 6 L. R. A. (N. S.) 1171, 120 Am. St. Rep. 598; *Guardian Trust & D. Co.* v. *Fisher*, 200 U. S. 57, 26 Sup. Ct. 186; *Fisher* v. *Greensboro Water Supply Co.*, 128 N. C. 375, 38 S. E. 912; *Gorrell* v. *Greensboro Water Supply Co.*, 124 N. C. 318, 32 S. E. 720, 46 L. R. A. 513.

It may be stated as a general rule that a third party has a right of action upon a promise made for his benefit, though he is a stranger both to the promise and to the consideration. The application of the rule is based upon either a trust relationship, subrogation, agency, the broad equity of the transaction or privity of contract by substitution. The last is the only ground upon which liability can be placed on a water company under the present circumstances. But in order that a third party